

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 01-18

In the matter of the creation
of rules providing guidance on
assistance to individual court users.

FILED

MAY 3, 2002

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On April 18, 2002, the court held a public hearing on the petition filed on December 21, 2001, by the Wisconsin Clerks of Circuit Court Association, Wisconsin Association of Municipal Court Clerks, and Registers in Probate Association. Petitioners request the court adopt a supreme court rule, under chapter 70 Judicial Administration, providing guidance for court staff on assistance to individual court users.

IT IS ORDERED that, effective July 1, 2002, the Supreme Court Rules are amended as follows:

SECTION 1. 70.41 of the Supreme Court Rules is created to read:

70.41 Assistance to court users; court staff guidelines.

(1) DEFINITIONS. In this rule:

(a) "Court" means an appellate, circuit, or municipal court.

(b) "Court staff" means persons under the supervision of the clerk of the supreme court and court of appeals, a clerk of circuit court, a circuit court commissioner, a register in probate, a district court administrator, a circuit court judge, or a municipal court judge.

(c) "Forms" means any of the following:

1. Forms that have been approved by the records management committee.
2. Forms that have been approved by a circuit court or municipal judge for use in that jurisdiction.

(d) "Individual" means any person who seeks court-related information, including information needed to file, pursue, or respond to a case.

(e) "Should" is directory only, not mandatory, and connotes a duty or obligation to pursue a goal or objective.

(2) PURPOSE. The purpose of this rule is to assist the court in communicating with individual court users without practicing law. The rule is intended to enable court staff to provide the best service possible to individuals within the limits of the individual staff member's responsibility. The rule is not intended to restrict powers of court staff otherwise provided by statute or rule nor is it intended to eliminate the collection of applicable fees or costs. The rule is not intended to list all assistance that can be provided. The rule recognizes that the best service the court staff may provide in many proceedings is advising an individual to seek the assistance of an attorney.

(3) IMPARTIALITY. Court staff shall remain impartial and may not provide or withhold assistance for the purpose of giving one party an advantage over another.

(4) AUTHORIZED INFORMATION AND ASSISTANCE. Court staff shall do all of the following:

(a) Provide public information contained in any of the following:

1. Dockets or calendars.
2. Case files.
3. Indexes.
4. Existing reports.

(b) Provide a copy of, or recite, any of the following:

1. Common, routinely employed state and local court rules.
2. Common, routinely employed court procedures.
3. Common, routinely employed applicable fees and costs.

(c) Advise an individual where to find statutes and rules, without advising whether a particular statute or rule is applicable.

(d) Identify and provide applicable forms and written instructions without providing advice or recommendations as to any specific course of action.

(e) Answer questions about how to complete forms, such as where to write in particular types of information, but not questions about how the individual should phrase his or her responses on the forms.

(f) Define terms commonly used in court processes.

(g) Provide phone numbers for lawyer referral services, local attorney rosters, or other assistance services, such as Internet resources, known to the court staff.

(h) Provide appropriate aids and services for individuals with disabilities to the extent required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

(5) UNAUTHORIZED INFORMATION AND ASSISTANCE. Court staff may not do any of the following:

(a) Provide legal advice or recommend a specific course of action for an individual.

(b) Apply the law to the facts of a given case, or give directions regarding how an individual should respond or behave in any aspect of the legal process.

(c) Recommend whether to file a petition or other pleading.

(d) Recommend phrasing for or specific content of pleadings.

(e) Fill in a form, unless required by sub. 4 (h).

(f) Recommend specific people against whom to file petitions or other pleadings.

(g) Recommend specific types of claims or arguments to assert in pleadings or at trial.

(h) Recommend what types or amount of damages to seek or the specific individuals from whom to seek damages.

(i) Recommend specific questions to ask witnesses or litigants.

(j) Recommend specific techniques for presenting evidence in pleadings or at trial.

(k) Recommend which objections to raise regarding an opponent's pleadings or motions at trial or when and how to raise them.

(l) Recommend when or whether an individual should request or oppose an adjournment.

(m) Recommend when or whether an individual should settle a dispute.

(n) Recommend whether an individual should appeal a judge's decision.

(o) Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.

(p) Perform legal research.

(q) Predict the outcome of a particular case, strategy, or action.

(6) REFERRAL TO SUPERVISOR. When a court staff member is uncertain whether the advice or information requested is authorized, the staff member should seek the assistance of a supervisor. If a supervisor is not available, the staff member should advise the individual to seek assistance from an attorney.

Comments

Court staff shall provide a copy of a common rule, but court staff should not attempt to apply the rule to the facts in the individual's case. Sometimes, after court staff provides a rule, an individual will ask whether or how the rule would apply, or if the rule might be applied differently, given the

facts in his or her case. This calls for an interpretation of the law or rule of procedure. Court staff shall avoid offering interpretations of laws or rules.

In providing assistance regarding forms, court staff may inform individuals that some general content may be required in a pleading, such as identification of the other parties involved in the accident or a description of the facts surrounding the accident. But court staff may not tell an individual whom to identify or which particular facts might be relevant in the pleading.

Court staff should, if possible, provide or direct an individual to pamphlets or other documents that may address an individual's question and that have been prepared for general distribution to the public.

Court staff may not compute deadlines specified by statute or rule.

Court staff may not perform legal research. Court staff may refer individuals to sections of the Wisconsin supreme court rules, local court rules, or Wisconsin statutes that govern matters of routine administration, practice, or procedure and they may give definitions of common, well-defined legal terms used in those sections. However, court staff shall not interpret the meaning of statutes or rules.

The list of prohibited types of assistance set forth under sub. 70.41(5) is not comprehensive. The list is consistent with the statutory directives in ss. 757.22 and 757.30(2), stats., regarding the practice of law by judicial officers and the unauthorized practice of law.

IT IS FURTHER ORDERED that the Comments accompanying this rule are not adopted but shall be printed for information purposes.

IT IS FURTHER ORDERED that notice of the amendment of the Supreme Court Rules be given by a single publication of a copy of this order and of the petition in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 3rd day of May, 2002.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

